

CLIFFORD T. FREDRICKSON
FERN FREDRICKSON

IBLA 95-376

Decided May 22, 1998

Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring a mining claim null and void for failure to pay timely the claim maintenance fee. ORMC 20873.

Affirmed.

1. Mining Claims: Rental or Claim Maintenance Fees:
Generally

Under 30 U.S.C. § 28f(a) (1994), the holder of an unpatented mining claim, mill site, or tunnel site is required to pay a claim maintenance fee of \$100 per claim on or before Aug. 31 of each year for years 1994 through 1998 and failure to pay the fee renders the claim null and void by operation of law. The statute gives the Secretary discretion to waive the fee for a small miner who holds not more than 10 mining claims, mill sites, or tunnel sites, or combination thereof, and under 43 C.F.R. § 3833.1-7(d)(2), a claimant must file proof of the conditions for waiver by the Aug. 31 immediately preceding the assessment year for which the waiver is sought.

2. Mining Claims: Rental or Claim Maintenance Fees:
Generally

Under 43 C.F.R. § 3833.0-5(m), a claim maintenance fee will be considered timely filed if it is mailed to the proper BLM office in an envelope clearly postmarked by a bona fide mail delivery service within the period prescribed by law and is received by the proper BLM State Office within 15 calendar days subsequent to such period. Where a properly addressed envelope containing the maintenance fee is received by BLM within the 15-day grace period, but the envelope is not postmarked within the prescribed period, the mining claim listed on the certificate is properly declared forfeited.

3. Accounts: Payments--Mining Claims: Rental or Claim
Maintenance Fees: Generally

When BLM deposits a check submitted in payment of a mining claim maintenance fee, but that fee was not timely submitted, depositing the check does not constitute acceptance of the fee or an adjudication that the mining claim has not been forfeited.

APPEARANCES: John C. Guadnola, Esq., Tacoma, Washington, for Appellants.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Clifford T. Fredrickson and Fern Fredrickson have appealed from a March 20, 1995, decision of the Oregon State Office, Bureau of Land Management (BLM), declaring the Eureka Quartz mining claim (ORMC 20873) null and void and rejecting a proof of labor for because no \$100 per claim maintenance fee or waiver certification was filed for the claim on or before August 31, 1994, as required by section 10101 of the Omnibus Budget Reconciliation Act of August 10, 1993 (the Act), 30 U.S.C. § 28f(a) (1994), and 43 C.F.R. §§ 3833.1-5, 3833.1-6, and 3833.1-7.

[1] Under 30 U.S.C. § 28f(a) (1994), the holder of an unpatented mining claim, mill site, or tunnel site is required to pay a claim maintenance fee of \$100 per claim on or before August 31 of each year for the years 1994 through 1998. Under 30 U.S.C. § 28i (1994), failure to pay the claim maintenance fee "shall conclusively constitute a forfeiture of the unpatented mining claim, mill or tunnel site by the claimant and the claim shall be deemed null and void by operation of law." The statute gives the Secretary discretion to waive the fee for a small miner who holds not more than 10 mining claims, mill sites, or tunnel sites, or combination thereof, on public lands and has performed assessment work required under the Mining Law of 1872. 30 U.S.C. § 28f(d)(1) (1994). The BLM has implemented this statute with a regulation that requires a claimant to file "proof of the * * * conditions for exemption * * * with the proper BLM office by the August 31 immediately preceding the assessment year for which the waiver is sought." 43 C.F.R. § 3833.1-7(d)(2).

On September 6, 1994, BLM received a check for \$105 from Appellants in payment of the \$100 maintenance fee for the claim and the \$5 filing fee for filing a proof of labor for the claim, which was also submitted. The check and the proof of labor arrived in an envelope bearing a September 2, 1994, postmark. Appellants assert, however, that the envelope was mailed on August 31. In an affidavit accompanying the statement of reasons in this case, Fern Fredrickson explains:

It is my regular practice to put outgoing mail into my mailbox, for pickup by our postal delivery man, or to deposit it into an official collection box at a nearby shopping center in Milton, Washington. I am certain that I deposited this payment at the

shopping center, for two reasons: first, I never leave any envelope containing a check in my mailbox for pickup by our postal delivery man; second, I knew that this payment had to be mailed on August 31, and I would not have taken a chance that the postal delivery man would not pick the envelope up that day.

As I stated above, I am certain that I deposited the envelope containing this payment in the official post office collection box at the local shopping center. I am also certain that, at the end of the day on August 31, 1994, there was no envelope in my mailbox remaining to be picked up. Therefore, even if I broke with my ordinary practice and left this envelope in the mailbox, it must have been picked up by the postal delivery man that day.

The dispositive issue in this case is whether the maintenance fee was timely filed. Departmental regulation 43 C.F.R. § 3833.0-5(m) provides as follows:

File or filed means being received and date stamped by the proper BLM office. For purposes of complying with §§ 3833.1-2, 3833.1-3, 3833.1-5, 3833.1-6, 3833.1-7, or 3833.2, a filing or fee required by any of these sections is timely if received within the time period prescribed by law, or, if mailed to the proper BLM office, is contained within an envelope clearly postmarked by a bona fide mail delivery service within the period prescribed by law and received by the proper BLM State Office by 15 calendar days subsequent to such period, except as provided in § 1821.2-2(e) of this title if the last day falls on a day the office is closed.

[2] Depositing a document in the mailbox on August 31 does not constitute timely payment because the words "file" and "filed" mean "being received and date-stamped by the proper BLM office." 43 C.F.R. § 3833.0-5(m). The maintenance fee sent to BLM by Appellants was not filed when they deposited the envelope containing their check in the mailbox. Michael J. Whittle, 142 IBLA 61, 62 (1997). Because the check was not "received and date stamped" by BLM on that date, the filing did not occur in this case until the envelope containing Appellants' check was received and date-stamped by BLM on September 6, 1994. Under the regulation, their payment may be deemed timely only if it was "contained within an envelope clearly postmarked by a bona fide mail delivery service" by August 31.

In a case in which an envelope containing maintenance fees was postmarked before the due date but was not delivered until after the end of the grace period, we repeated our holding that those who choose a means of delivery necessarily assume the risk that the chosen agent may not deliver on time the item which was sent, and that any loss caused by a failure to

make timely delivery must be borne by the one who chose the means of delivery. Bellmetal Enterprises, Inc., 140 IBLA 76, 78 (1997). Just as there may be delays in delivering a document, delays may also occur in obtaining a postmark. One purpose of the "postmark" rule is to make it unnecessary to consider disputes concerning when a document may have actually been mailed.

For example, in Michael J. Whittle, supra, at 62, the appellants stated they placed their maintenance fee waiver certificates in a mailbox outside the post office at Grants Pass, Oregon, on August 29, but their certificates were received by BLM on September 9 in an envelope postmarked September 6 in Medford. They inquired at the Grants Pass post office and learned that the mail from that office is transferred to Medford for processing. When they questioned why the envelope was postmarked 7 days after they mailed it, they were told by an official of the Grants Pass post office that this could have happened, but that such a long time had passed between the mailing and the inquiry that the post office did not have any record of a particular delay during the week in question. We concluded that although 43 C.F.R. § 3833.0-5(m) provides a 15-day grace period, that grace period only applies if a filing was contained in an envelope bearing a postmark within the filing deadline. Id. at 63.

[3] Finally, Appellants observe that they paid their fee by a check, and they assert that BLM's negotiation of the check constitutes an acceptance of the maintenance fee so that the decision should be vacated. However, the Receipt and Accounting Advice acknowledging Appellants' \$105 payment of the maintenance fee and fee for filing a proof of labor notes that the proof of labor is rejected and that a refund from the Treasury Department has been requested. Moreover, BLM noted in its decision that the payment made by Appellants would be "refunded."

In Clarence Souser, 108 IBLA 59, 61 (1989), we adhered to longstanding precedents in rejecting an argument that the acceptance of an oil and gas lease rental check required the Department to reinstate an oil and gas lease that terminated by operation of law. We held that cashing a check or depositing it in an unearned account does not constitute an acceptance of the payment nor a determination that a lease will be reinstated, and noted that a refund for the rental checks tendered after lease termination should occur in due course. See also Arjay Oil Co., 138 IBLA 22, 24 n.6 (1997). Similarly, when BLM deposits a check submitted in payment of a mining claim maintenance fee, but that fee was not timely submitted, depositing the check does not constitute acceptance of the fee or an adjudication that the mining claim has not been forfeited.

Responsibility for satisfying fee requirements imposed by the Act rests entirely with Appellants since the Act provides "that failure to pay the claim maintenance fee * * * required by [this Act] shall conclusively constitute a forfeiture of the unpatented mining claim * * * by the claimant and the claim shall be deemed null and void by operation of law."

30 U.S.C. § 28i (1994); William Jenkins, 131 IBLA 166, 168 (1994). Appellants' fee payment was not filed timely under the postmark rule provided at 43 C.F.R. § 3833.0-5(m). The postmark rule was properly applied by BLM in this case because Appellants chose to send their fee through the mail. Under the circumstances, as a consequence of Appellants' failure timely to pay the required fee, their claim was forfeited and BLM properly deemed the claim null and void by operation of law. When a mining claim is forfeited and deemed null and void as a matter of law, the fact that BLM may have deposited a late filed check does not modify the effect of the statute. See Alva F. Rockwell, 47 IBLA 272, 274 (1980).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge